

CITY OF DULUTH

Planning Division

411 W 1st St, Rm 208 * Duluth, Minnesota 55802-1197

Phone: 218/730.5580 Fax: 218/723-3559

STAFF REPORT

File Number	PL 13-140		Contact	Steven Robertson, 218-730-5295	
Application Type	Variance		Planning Commission Date	November 12, 2013	
Deadline for Action	Application Date	October 15, 2013	60 Days	December 14, 2013	
	Date Extension Letter Mailed	October 18, 2013	120 Days	February 12, 2014	
Location of Subject	506 West 5th Street				
Applicant	James Olson		Contact	cartonsdny@aol.com	
Agent			Contact		
Legal Description	010-1270-03760				
Site Visit Date	October 29, 2013		Sign Notice Date	October 28, 2013	
Neighbor Letter Date	October 24, 2013		Number of Letters Sent	33	

Proposal

The applicant would like to expand the height of a non-conforming building by 9 feet. The existing single family home is located in the front and side yard setbacks.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-2	Residential	Traditional Neighborhood
North	R-1	Residential	Traditional Neighborhood
South	R-2	Residential	Traditional Neighborhood
East	R-2	Residential	Traditional Neighborhood
West	R-2	Residential	Traditional Neighborhood

Summary of Code Requirements (reference section with a brief description):

Sec. 50-14.5 - Residential-Traditional District. Front Yard Setback, 25 feet or the average of adjacent developed lots. Side yard setback, 6 feet (less than 3 stories).

Sec. 50-37.9. B - Variances. Procedures. "The Planning Commission shall . . . make a decision on the application based on the criteria in subsections 50-37.9.C through M

Sec. 50-37.9.C. - General Variance Criteria. See UDC pages 5-29 through 5-33 (paraphrased here):

Granting of variances of any kind is limited to situations where, due to characteristics of the applicant's property, enforcement of the ordinance would cause the landowner practical difficulties or undue hardship. The Planning Commission must find the following for a variance to be granted: a) That they are proposing to use the property in a reasonable manner, b) that the need for relief from the normal regulations is due to circumstances unique to the property and not caused by the landowner, c) that granting the variance will not alter the essential character of the area, d) that granting the variance is consistent with the intent of the UDC and the Comprehensive Plan.

1-7

Comprehensive Plan Findings (Governing Principle and/or Policies) and Current History (if applicable):

Urban Residential Future Land Use. Greatest variety of building types, medium to high densities. Applicable to larger infill areas close to downtown, entertainment or activity centers, and waterfront residential areas. May include student housing areas, live/work units, and limited neighborhood retail. Connected or adjacent to parks and open space.

Principle #8 - Encourage mix of activities, uses and densities

Cities have evolved as a mix of land uses, building types, housing types, and activities. Accommodating choice while protecting investment is a balance to strike in land use regulation. Mixed uses provide opportunity for a diversity of activity that segregated, uniform uses do not provide.

Discussion (use numbered or bullet points; summarize and attach department, agency and citizen comments):

- 1) The applicant wishes to construct a small upper level addition to the existing single family home (a vertical expansion of 9 feet for a peaked roof). The structure is non-conforming because it is in the front and side yard setbacks; typically non-conforming structures are allowed to continue, but not expand, unless the property owner receives a zoning variance from the City.
- 2) The home was built in 1903, and is located in western corner of the lot. The lot is 50 feet wide and a 100 feet deep. The front yard of the property is considered to be West 5th Street. The proposed project will not exceed the maximum height allowed in R-2 (45 feet).
- 3) The need for relief is not due to circumstances created by the homeowner, as this house was built prior to the zoning setbacks.
- 4) A small single family home is not out of character for the neighborhood, and the proposed addition of the peaked roof is not unreasonable. The requested relief is necessary for the preservation of a substantial property right and is not merely for the convenience of the property owner.
- 5) The proposed increase to the primary structure will not impair supply of light or air to adjacent properties, or increase congestion on public streets, or diminish property values. It will not alter the essential character of the surrounding area. It will not increase the existing density of housing units in the neighborhood.
- 6) No city or agency comments were received. Two citizens contacted City staff about the variance; they were not opposed to the variance, but were simply wondering why the variance was applied for after the construction had started.
- 7) Per UDC Sec. 50-37.1.N, approved variances lapse if the project or activity authorized by the permit or variance is not begun.

Staff Recommendation (include Planning Commission findings, i.e., recommend to approve):

Based on the above findings, Staff finds that the standard for the variance (increase the height of the non-conforming structure) has been met and, therefore, recommends the Planning Commission approve the requested variance, subject to the following conditions:

- 1) Applicant construct the project in accordance with project area identified on the site plan stamped received October 15, 2013.
- 2) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.

Attachments (aerial photo with zoning; future land use map; site plan; copies of correspondence)



City Planning

PL 13-140
Variance
506 W 5th St

Legend

DuluthStream_cl

TROUT_FLAG

Trout Stream (GPS)

Other Stream (GPS)

Zoning (Final)

Floodplain Type

General Flood Plain

Flood Way

Flood Fringe

Future Land Use

Preservation

Recreation

Rural Residential

Low-density Neighborhood

Traditional Neighborhood

Urban Residential

Neighborhood Commercial

Neighborhood Mixed Use

General Mixed Use

Central Business Secondary

Central Business Primary

Auto Oriented Commercial

Large-scale Commercial

Business Park

Tourism/Entertainment District

Medical District

Institutional

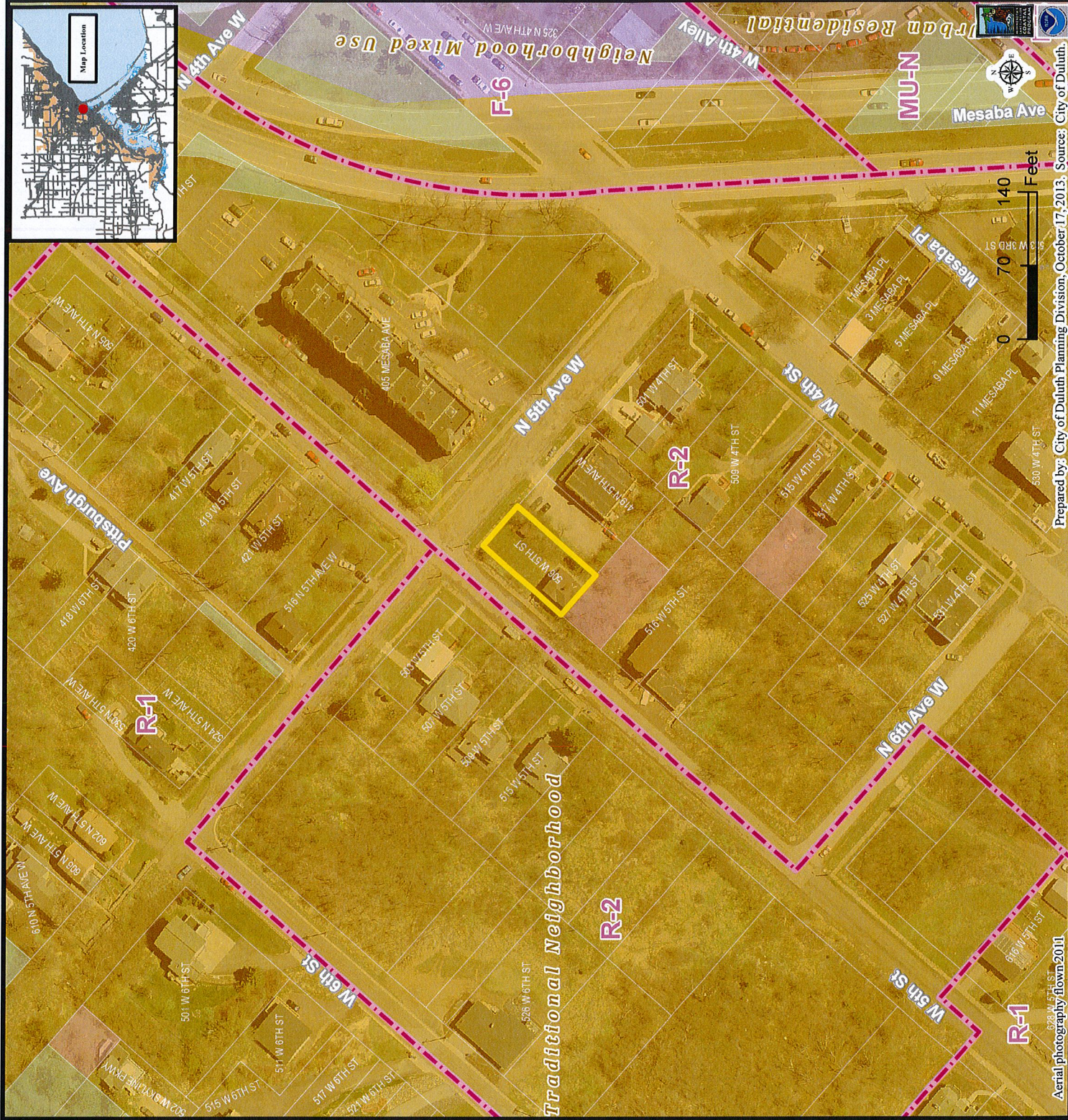
Commercial Waterfront

Industrial Waterfront

Light Industrial

General Industrial

Transportation and Utilities

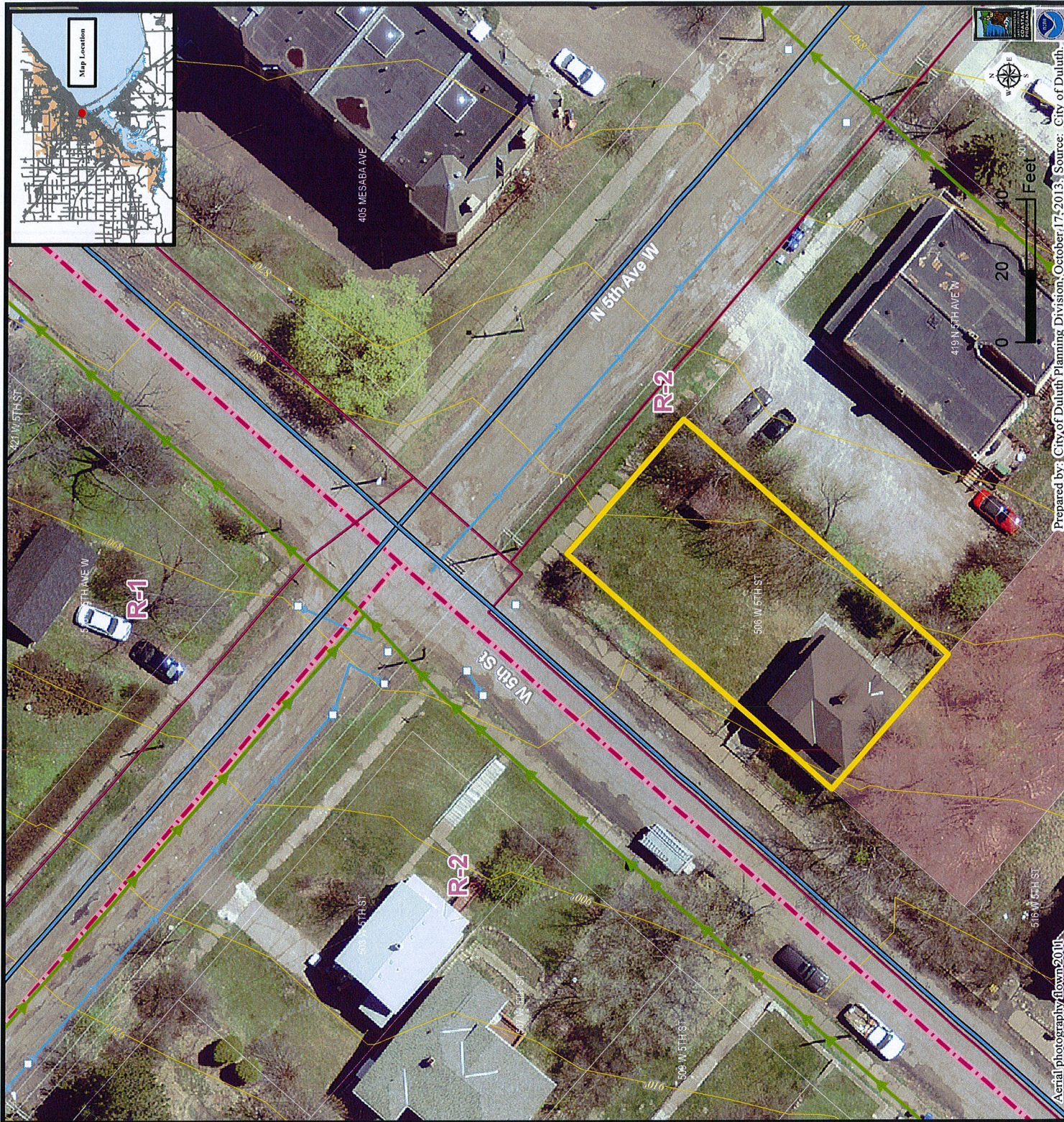


Aerial photography flown 2011

Prepared by: City of Duluth Planning Division, October 17, 2013. Source: City of Duluth.

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

6-3



Aerial photography flown 2011

Prepared by: City of Duluth Planning Division, October 17, 2013. Source: City of Duluth.



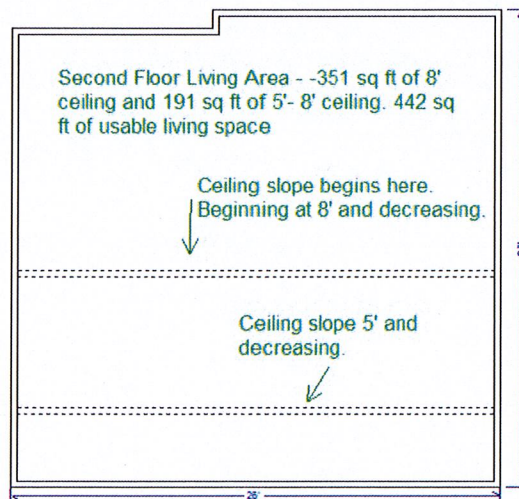
Dear Mr. Robertson and the Duluth Planning Commission,

I'm writing to you to request a variance from the City of Duluth's UDC for my home located at 506 West 5th Street. Specifically, I am requesting a variance for my front and side setbacks so I may have a roof that incorporates living space in the attic. I bought the home in May knowing that it was condemned because I believed that I would be able to revitalize the home and utilize the space within the current footprint to meet my living needs. Without a variance to increase the size of my home, it will remain too small to meet my needs. I believe that is both a practical difficulty and undue hardship due to the building being built 110 years ago when zoning restrictions were different.



Description of the Proposed Improvements

I would like to share, with you, my plan for achieving more living space, why I believe that this is the best way for making my home meet my growing space needs, and how it is the plan with the least impact on the narrow lot size and surrounding neighborhood. The home has two floors above grade that are shown below.



Combined, the two floors have 1081 square feet of usable living space. There is also a basement which is partially below grade and entirely below the street level which is smaller than the entry level floor that I will also be utilizing.

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6-6

My goal is to increase the living space in two ways. First, is to reclaim the unusable space (because the ceiling is too low) on the second floor by continuing a wall height to make the entire living area tall enough to stand up in. A gain of 104 square feet of living space is achieved by doing this modification. The second way to gain living space is to use roof trusses that will provide for a conditioned room within the "attic" space. This will result in a gain of 306 square feet of living space. Combined this is a total of 410 square feet, which is adding 38% more useable living space.

The roof trusses that are required for this project would mirror the roof pitch that was established on the sides of the home (12/12 pitch). Instead of the existing hip roof, a gable style roof (across the front) would be utilized. This would bring the roof to a peak, rather than a flattened portion where the roof lines meet. Counting the bottom deck space below the trusses, this would raise the total building height by nine feet.

Choosing to replace the roof has several important benefits outside of gaining living space. First, the gable roof transfers the roof loads directly to the exterior foundation where there is the most support. Second, the long sloping portion of the ceiling is does not have any support in the interior of the home. The roof is only supported by 2x4 boards that run over 14 feet long at an 8/12 pitch (note: this is a different pitch than the sides). There is a wall that meets the span at just under 10 feet in from the exterior wall, but there is no support for the wall at the foundation or on piers under the home. Third, the 2x4's that support the sloping roof are the barrier between the conditioned living space and the outside. As it was constructed, there isn't space for a proper air circulation. The lack of air circulation is likely a factor in the roof in that area of the home being rotten (due to condensation). Finally, solving the air circulation problem is possible, but by doing so it cuts into the insulation space that is already inadequate. Using the highest R-Value insulation on the market (closed-cell spray foam insulation) and 1 inch baffles for air flow, an R-Value of 15 can be achieved. This is less than 40% of the minimum required R-Value for a roof. Widening the insulation space isn't an option because there are windows directly below the end of the sloping ceiling which in turn causes a whole new set of issues. (As seen to the right).

In conclusion, my understanding is that variances are intended to remedy difficulties created by zoning ordinances. The condemned home that I purchased was built 110 years ago when zoning setbacks were different. It was built (or remodeled prior to my owning it) with a roof that lacks air circulation, insulation, and is unsupported. By fixing this with new roof trusses, I can gain the living space that I require and it also solves these other problems that need to be fixed to attain occupancy.

Proposed Street Elevation . . .



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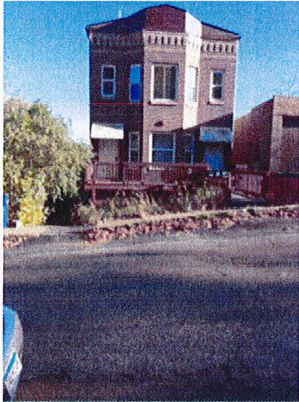
Neighborhood Impact

There is only one other home that shares the side of the street my home is on. It has the same setback from the street as mine (meaning the front of the home near the property line and not 25 feet back). There is a wooded area between our homes blocks much of the visibility of each other's dwellings. With the roof project, my home will still be the second shortest home on 5th street and 5th avenue west (the neighbor that shares the same side of the street as I will be a few feet shorter). All of the homes on the opposite side of the street are significantly higher than my home when viewed from the street level.

Houses facing my home . . .



House sharing the same side of the street as my home . . .



There are no homes within 50 feet of my home in every direction. The proposed changes to my home will not alter light or air paths for any of the home in my neighborhood. In the end, having a newly remodeled home is a significant improvement over having a condemned home.

I appreciate the commission's time and consideration and looking forward to answering any questions or concerns at the Planning Commission meeting on November 12th.

Respectfully,

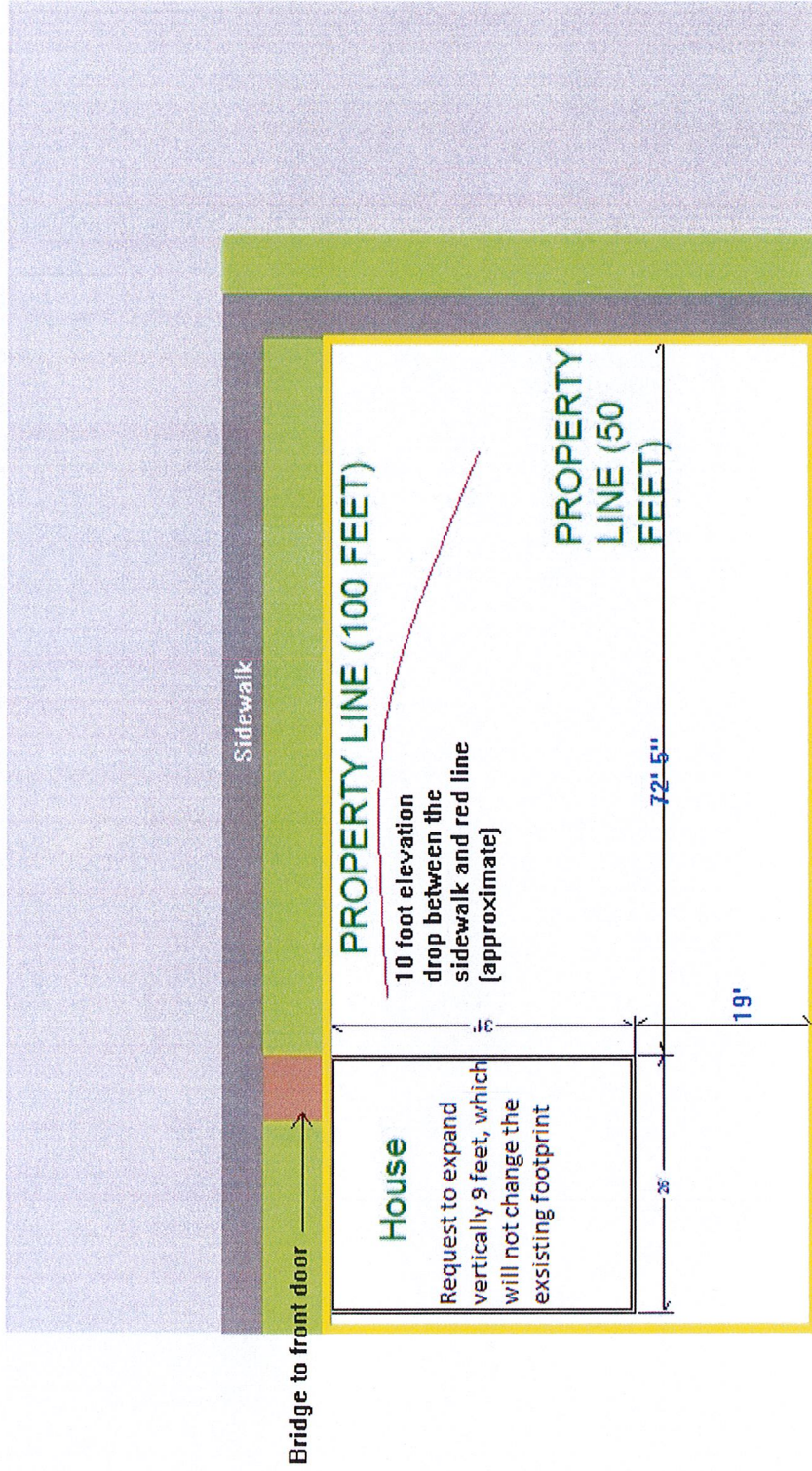
A handwritten signature in cursive script, appearing to read "James Olson".

James Olson

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8-7

CENTER LINE OF 5th STREET



L-9

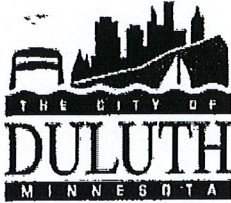
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City of Duluth
Construction Services & Inspections Division

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10/8/13

STOP WORK ORDER

James G. Olson
3896 E. Love Rd.
Superior, WI 54880

Re: **506 W. 5th St. – Addition to Dwelling**
File #1270-03760

Pursuant to Minnesota Rules, Chapter 1300.0170 of the State of Minnesota Building Code, you are hereby ordered to **cease any and all construction activity** at the above referenced property, effective immediately, until such time that proper plans are received and approved by this office and the appropriate permits are issued.

Upon approval of submitted plans and issuance of a building permit, an investigation fee, per Minnesota Rules, Chapter 1300.0160, Subpart 8 of the State of Minnesota Building Code, and Section 10-2(e) of the Duluth Legislative Code, will be assessed.

Violation of this **Stop Work Order** is a misdemeanor per Section 1-7 of The Legislative Code of the City of Duluth and is punishable by a fine not exceeding \$1,000.00. Every day any violation of this Code or any other ordinance of the city shall constitute a separate offense.

Please feel free to call me at (218) 730-5162 with any questions.

Respectfully,

Dan Nelson
Duluth Building Official

DWN:cs

NOTICE OF APPEAL RIGHTS

You have a right to appeal a decision of the building official within 15 days and pay the appeal fee (\$120) in accordance with Duluth City Code Section 10-5 and Minnesota State Building Code Section 1300.0230. An application for appeal to an order by the building official shall be based on a claim that the true intent of the code or the rules has been incorrectly interpreted, the provisions of the building code do not fully apply or an equally good or better form of compliance is proposed. The board has no authority to waive requirements of the building code.

21-7